IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

P. I. L. NO.98 OF 2004

Appasaheb Babaji Patil. ...Petitioner.
Vs.
The State of Maharashtra & Ors. ...Respondents.
....
Mr.M. A. Patil for the Petitioner.
Mr. P. M. Patil, A. G. P. for Respondent No.1 to 3.
Mr. S.G. Page for Respondent No.4.
.....

CORAM : DALVEER BHANDARI, C.J. &
DR.D.Y.CHANDRACHUD, J.

September 22, 2004.

P.C.:

The Petitioner prays for the issuance of a writ of mandamus directing the Respondents (i) not to allow any person – either the Chief Minister or any other Minister – to perform the Mahapooja of Lord Vithal on the Ashadhi and Kartiki Ekadashi of each year at the Temple at Pandharpur; (ii) to keep the Temple open for Darshan to common devotees continuously from midnight on Dashmi night without any interruption; and (iii) to refrain from issuing passes out of turn and to follow strictly the queue system. The basis on which these reliefs have been sought, may in our view, be summed up in the following two extracts of averments

contained in paragraphs 1 and 8 of the Petition. In paragraph 1, the Petitioner avers thus:

> "The Petitioner is a Devotee of Lord Vithal and the Petitioner frequently visits the temple of Lord Vithal on the occasion of `Ekadashi' of each fortnight and on four important Ekadashis that are Ashadhi, Kartiki, Maghi and Chaitri, for Darshan. The Petitioner states that on the said Ekadashis, it is believed that the Lord Vithal does not sleep and, therefore, no routine of nitya Pooja and Upachars would be performed on that day as per the Pandharpur Temple Act, 1973."

In paragraph 8, the Petitioner avers as follows:

> "The Petitioner states that the Respondent No.4 for their own means and purposes and for the reasons best known to them, used to invite the Chief Minister and other Ministers for performing the Pooja of Lord Vithal on the said two important days i.e. Ashadhi and Kartiki Ekadashi. The Petitioner states that according to the Pandharpur Temple Act, 1973, there is no such provision incorporated to perform the Mahapooja at the hands of Chief Minister or any other Ministers on any single Ekadashi. The Petitioner states that according to the Pandharpur Temple Act and faith of the Devotee, Lord Vithal do not sleep for five days before Ashadhi Ekadashi and, therefore, the said Nitya Pooja is not required to be performed, and, therefore, Mahapooja performance on the day of Ashadhi and Kartiki Ekadashi is not required to be performed at the hand of Chief Minister or any other Ministers."

2. On behalf of the Respondents, reliance has been placed on an order dated 28th June 1994 passed by a Division Bench of this Court in Writ Petition No.5127 of 1993, while dismissing the writ petition in the following terms :

> "It is not for the High Court to decide while exercising extra-ordinary writ jurisdiction under Article 226 of the Constitution, as to who should and who should not perform Maha Pooja at a public temple and when and for how long. Thus finding no merits in this writ petition, we summarily reject it."

3. The Petitioner has contended in the rejoinder that the facts in Writ Petition No.5127 of 1993 were different and that the prayer made therein was to allow Varkaris to perform the Pooja in the temple at Pandharpur on the Ashadhi Ekadashi.

4. Having heard the learned Counsel appearing for the Petitioner, we are of the view that the exercise of the jurisdiction under Article 226 of the Constitution of India is not warranted. In so far as prayer (a)(i) is concerned, we are of the view that the exercise of the jurisdiction of the Court under Article 226 is not warranted in a Petition seeking a direction that any individual

should be prohibited from offering prayers in the temple at Pandharpur. In so far as prayers (a)(ii) and (a)(iii) are concerned, the question as to whether the temple should be continuously kept open from midnight and the manner in which order should be maintained so as to enable devotees to offer worship are not matters meet for judicial determination under Article 226. We do not find any reason to interfere. The Petition is accordingly rejected.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.